

Internal Revenue Service

Number: **201103027**

Release Date: 1/21/2011

Index Number: 1502.75-00, 9100.20-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:04

PLR-128858-10

Date:

October 13, 2010

Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Subsidiary 4 =

Subsidiary 5 =

Company Official =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to a letter dated July 7, 2010, submitted on behalf of Parent requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and its subsidiaries to make an election to file a consolidated Federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as "Election"), effective for the taxable year ending Date 3. Additional information was submitted in correspondence dated September 17, 2010. The material information submitted is summarized below.

Parent, Subsidiary 1, Subsidiary 2, Subsidiary 3, Subsidiary 4, and Subsidiary 5 constitute the Parent affiliated group (the "Parent Group"). Parent, Subsidiary 1, Subsidiary 2, Subsidiary 3, and Subsidiary 4 were formed on Date 1 with Parent owning all the stock of Subsidiary 1, and Subsidiary 1 owning all the stock of Subsidiary 2, Subsidiary 3, and Subsidiary 4. On Date 2, Parent acquired all the stock of Subsidiary 5. Parent and the former shareholders of Subsidiary 5 made an election to treat the acquisition of Subsidiary 5 as a purchase and sale of assets pursuant to § 338(h)(10).

The Parent Group intended to file a consolidated Federal income tax return, with Parent as the common parent, for the taxable year ending on Date 3. The Election was due on Date 4, but for various reasons a valid Election was not filed. On Date 5, a date after the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for the Parent Group's taxable year for which they want to make the Election,

the taxable year in which the Election should have been filed, or any taxable years that would have been affected by the Election had it been timely filed.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for filing the common parent's return.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. § 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. § 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent and Company Official explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, provided Parent Group qualifies substantively to file a consolidated return for the applicable tax year, an extension of

time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Election (by filing a consolidated return, with Parent as the common parent, and attaching a Form 1122 for each of Subsidiary 1, Subsidiary 2, Subsidiary 3, Subsidiary 4, and Subsidiary 5) for the taxable year ending Date 3. The Parent Group must attach a copy of this letter to such return, or if the Parent Group files the return electronically, a statement may be attached to the return that provides the date and control number of this ruling.

The above extension of time is conditioned on Parent Group's tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to Parent Group's tax liability for the year involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that Parent Group's tax liability is lower. § 301.9100-3(c).

We express no opinion with respect to whether Parent Group qualifies substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or consequences of filing the return or Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the return or the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayer. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel (Corporate)